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No. 355

IN THE

# Supreme Court of the United States

OCTOBER TERM, ~~1956~~ 1957

IN THE MATTER OF ELIZABETH BEATRICE HOBART, MENTALLY ILL.

## JURISDICTIONAL STATEMENT.

BAIRD BROOMHALL,
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RICHARD WILSON,
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*Attorneys for Petitioner.*

IN THE

# Supreme Court of the United States

OCTOBER TERM, [redacted] 1957

No. .....

IN THE MATTER OF ELIZABETH BEATRICE HOBART, MENTALLY ILL.

## JURISDICTIONAL STATEMENT.

## OPINIONS OF THE COURTS BELOW.

The judgment entry of the Supreme Court of Ohio in this case is found in Appendix F, page 13. No opinion was rendered.

The opinion of the Court of Appeals of Miami county, Ohio, Second District, is unreported, and the text is found in Appendix C, page 10.

The opinion of the Probate Court of Miami county, Ohio, is unreported, and a copy of the same is found in Appendix A, page 7.

## JURISDICTION OF THE COURT.

A review by the Supreme Court of the United States is sought by Charles C. Hobart, father, next friend, natural guardian, and the person by whom Elizabeth Beatrice Hobart has been, is and will be maintained, of the judgment of the Supreme Court of Ohio, the judgment of the

Court of Appeals of Miami county, Ohio, and the original order of the Probate Court of Miami county, Ohio, committing Elizabeth Beatrice Hobart as a mentally ill person to the State Hospital, where she is now, in violation of her rights to due process of law, equal protection of the laws, liberty, and the pursuit of happiness guaranteed by Amendment XIV of the Constitution of the United States and Article I of the Constitution of the state of Ohio.

This appeal is taken pursuant to 28 U. S. C., Section 1257.

A review is sought of the order of the Supreme Court of Ohio entered Wednesday, March 20, 1957, and dated March 20, 1957, dismissing the appeal of the appellant for the reason no debatable constitutional question is involved in this cause. Notice of appeal was filed in the Supreme Court of Ohio on June 10, 1957.

The Supreme Court of the United States has jurisdiction to review final judgment of state court for the purpose of ascertaining whether defendant was deprived of any right, privilege or immunity claimed under the Constitution of the United States.

Cases sustaining jurisdiction are as follows:

*Cyc. of Federal Procedure*, Second Edition, Vol. 10, Section 4980, page 378; cases cited under Note No. 16:

*Henderson Bridge Co. v. City of Henderson, Ky.*, 173 U. S., 592, 43 L. Ed., 823;

*Torao Takahashi v. Fish & Game Com.*, Cal. 1948, 68 S. Ct., 1138, 334 U. S., 410;

*Johnson v. Risk*, Tenn. 1890, 137 U. S., 300, 307, 11 S. Ct., 111, 34 L. Ed., 683;

*Leathe v. Thomas*, Ill. 1907, 28 S. Ct., 30, 207 U. S., 93, 52 L. Ed., 118;

*Hancock Nat. Bank v. Farnum*, R. I. 1900, 20 S. Ct., 506, 176 U. S., 640, 44 L. Ed., 619;

See, also, *Rogers v. Hennepin County*, Minn. 1916, 36 S. Ct., 265, 240 U. S., 184, 60 L. Ed., 594;

*Mallinckrodt Chemical Works v. Missouri*, Mo. 1915, 35 S. Ct., 671, 238 U. S., 41, 49, 59 L. Ed., 1192, 1193;
*Miedreich v. Lauenstein*, Ind. 1914, 34 S. Ct., 309, 232 U. S., 236, 58 L. Ed., 584;
*North Carolina R. Co. v. Zachary*, N. C. 1914, 34 S. Ct., 305, 232 U. S., 248, 58 L. Ed., 591;
*Carlson v. Washington*, Wash. 1914, 34 S. Ct., 717, 234 U. S., 103, 58 L. Ed., 1237;
*American Exp. Co. v. Mullins*, Ky. 1909, 29 S. Ct., 381, 212 U. S., 311, 53 L. Ed., 525, 15 Ann. Cas., 536;
*Atchison, T. & S. F. R. Co. v. Sowers*, Tex. 1909, 29 S. Ct., 397, 213 U. S., 55, 53 L. Ed., 695;
*San Jose Land & Water Co. v. San Jose Ranch Co.*, Cal. 1903, 23 S. Ct., 487, 189 U. S., 177, 47 L. Ed., 765.

There is brought in issue Section 5123.23 of the Revised de of Ohio which is found in Title 51, Page's Ohio Revised de Annotated, page 90.

## QUESTIONS PRESENTED.

The following questions are presented:

1. That of the properness of orders of the lower courts o based their findings upon superficial, incompetent, proper evidence, guesses, fears, and dire predictions to hieve a commitment and maintain forced confinement d forced medication, under which condition much of the er findings were made, in violation of the rights of izabeth Beatrice Hobart to due process of law, equal otection of the laws, liberty and the pursuit of happi-ss, guaranteed by Amendment XIV of the Constitution the United States (as well as the Constitution of the te of Ohio),—as compared to—the custody and care of izabeth by her father and what help her mother will give, th a good home at her father's farm and availability of r family home life as conditions permit, no forced con-

finement in bad company or forced medication and proper medical and psychiatric advice, as her father finds it is needed.

2. Do the findings and orders of the courts below violate the constitutional rights of Elizabeth Beatrice Hobart in that they approved thereby the removal of Elizabeth Beatrice Hobart by force and drugs from her home on October 27, 1951, and caused her to be confined at the Dayton State Hospital and the Miami Valley Hospital, Dayton, Ohio, in violation of Amendment IV of the Constitution of the United States guaranteeing the people of the United States to be secure in their persons against unlawful seizures?

## STATEMENT OF FACTS.

This cause originated in the Probate Court of Miami county, Ohio, under provisions of Section 5123.18 and sequence, 5125.01 and sequence, Revised Code, on the so-called recommitment of Elizabeth Beatrice Hobart, as a mentally ill person, to the Miami Valley Hospital, Dayton, Ohio, where she had been a patient, without a hearing and a proper formal commitment, since October 27, 1951. On May 2, 1952, the Probate Court of Miami county, Ohio, upon hearing, ordered commitment and treatment for Elizabeth Beatrice Hobart at Miami Valley Hospital continued for further order. On the twenty-eighth day of January, 1953, the matter was reviewed in the Miami county Probate Court and, after hearing, Elizabeth Beatrice Hobart was ordered committed for treatment to the Harding Sanitarium at Worthington, Ohio, to which she was transferred February 2, 1953.

On July 24, 1954, the matter came on for rehearing (Section 5123.24, Revised Code) before the Probate Court of Miami county, Ohio, and the question of permitting her

to come home and/or placing her in the custodial care of her father, Charles C. Hobart, considered. This question was not determined and subsequently, on or about the twenty-ninth day of August, 1954, she was transferred to the Dettmer Hospital at Troy, Ohio.

On August 5, 1955, and August 29, 1955, the matter was again heard by the Probate Court of Miami county, resulting in an order, March 7, 1956, committing Elizabeth Beatrice Hobart to the Dayton State Hospital, where she has been and still is confined as of the date of these presents.

This order was considered on appeal by the Court of Appeals of Miami county, Ohio, and on November 27, 1956, was affirmed.

On December 15, 1956, an appeal on constitutional grounds and on motion to certify was perfected to the Supreme Court of Ohio and the record and original papers filed with the clerk.

Charles C. Hobart, father and natural guardian of Elizabeth Beatrice Hobart and the person by whom she is maintained, the appellant, believing as he has always believed, that the original seizure and the several orders of the Probate Court, Court of Appeals of Miami county, Ohio, and the Supreme Court of Ohio, and resulting confinement, medication and treatment of his daughter has occasioned her alleged mental illness, states that there is error in the proceedings of the courts below in the hereinbefore stated particulars.

## SUBSEQUENT FEDERAL QUESTION.

Elizabeth Beatrice Hobart is being restrained of her freedom and confined in the Dayton State Hospital against her will under the authority granted the Probate Court of Miami county, Ohio, by Section 5123.23 of the Ohio Revised

Code. Such restraint is in violation of her constitutional rights of due process, equal protection of the laws, liberty and the pursuit of happiness and her right to be secure in her person against unreasonable seizures.

The liberty of this girl, her right to return to her home, and her right to live and follow a normal and her usual existence have been prevented. Her father, Charles C. Hobart, has been, and still is, willing and able to care for his daughter at home. The denial of this right of freedom invokes a substantial federal question.

Respectfully submitted,

BAIRD BROOMHALL,
WILLIAM M. HARRELSON,
Troy, Ohio,
RICHARD WILSON,
Piqua, Ohio,
*Attorneys for Petitioner.*

## APPENDIX A.

### Decision—Probate Court of Miami County, Ohio.

This matter was before the court by direction of the Probate Court of Miami county to review the case of Elizabeth Beatrice Hobart, heretofore found to be mentally ill.

The court not only heard all the testimony but ordered it be transcribed and has since read it as the importance of the matter merited that it be given careful and conscientious consideration.

This fine young lady has had the misfortune to have been the victim of the most unfortunate illness, that of the mind and one that infrequently is not possible of curative treatment.

I deeply appreciate the interest of the father who seeing all advanced treatment fail now clutches at a fanciful straw in the hope that there might still be some miracle by which she might be restored to the use of her mental facilities and make possible life among her family and friends.

There may be some merit in this wishful thinking and the court has therefore explored its possibilities hoping that good conscience might find a way to make it possible.

The medical testimony does not support any hope of a return to normalcy nor does it support a return to such a mental state that make the granting of the father's request one of safety.

Every opportunity has been given the father for visitation in the hope that these visits would provide some improvement in the mental condition of the ward. This has not been accomplished and does not appear to have even a remote possibility of meeting the issue in this case.

It is the feeling and finding of the court that Elizabeth B. Hobart should now be confined to the State Hospital for

mentally ill in order that such treatments as are necessary may be properly given, whether this requirement should be medicine or the absence of it. The court feels that the continuous confinement will be of greater benefit than the daily removal from the hospital now being tried. If she should improve, it is assured that the hospital will permit her to leave on trial visits if such should be deemed wise by them.

An entry may be drawn accordingly.

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## APPENDIX B.

### Entry—Probate Court of Miami County, Ohio.

This matter having come before the court upon the application of Rachel Elizabeth Hobart, mother of Elizabeth Beatrice Hobart, ward herein, for review of the previous orders made herein relative to the custody, care and treatment of the ward, and this matter having been very thoroughly presented to the court and very carefully considered by it, including the application for review, the record and all the evidence (Dettmer Hospital chart, testimony of M. J. Thompson, Dettmer Hospital administrator, Dr. George Harding, psychiatrist, Dr. H. Wayne Glotfelty, psychiatrist, Dr. Burton M. Hogle, physician, Dr. L. N. Lindenberger, physician, Dr. James T. Sagebiel, psychiatrist, the parents of Elizabeth Hobart and the transcript of testimony at the previous two hearings in 1952 and 1953), the court separately finds the following facts:

1. That Elizabeth Beatrice Hobart is seriously mentally ill;

2. That, based upon the unanimous medical testimony presented at this hearing, her illness is schizophrenia, a disease which makes the conduct of such a patient entirely unpredictable;

3. That such patients are sometimes tractable and sometimes impossible to control, depending upon his or her reaction from time to time to environmental factors, however carefully arranged, and that Elizabeth Beatrice Hobart is such a patient;

4. That several different programs of hospitalization, care and treatment of Elizabeth Beatrice Hobart have been authorized and tried during the past four years;

5. That none of such programs has improved or alleviated the unfortunate mental illness of the ward;

6. That the extensive and detailed medical testimony presented in evidence in the hearing herein offers no hope of a return to normalcy for or by the ward;

7. That Charles C. Hobart, father of the ward, is opposed to further medication or treatment for her mental illness and is opposed also to institutional care for her;

8. That Elizabeth Beatrice Hobart is dangerous and difficult to control and that any program to reestablish normal home and social life for her cannot be carried out with safety for her, because of her inability to adjust herself to such life; and

9. That Elizabeth Beatrice Hobart needs care in an institution for the care and treatment of the mentally ill.

The court also makes the following conclusions of law:

1. That this court has full jurisdiction of this matter; and

2. That this court has authority to require institutional care and treatment for Elizabeth Beatrice Hobart;

Based upon the foregoing findings of fact and conclusions of law, the court concludes:

1. That it is for the best interest of the ward that she be committed to an institution for the care and treatment of the mentally ill; and

2. That the Dayton State Hospital, Dayton, Ohio, is such an institution and the place to which she should be com-

mitted and placed in the custody of the superintendent of that hospital for such care and treatment as the members of the medical staff thereof may deem appropriate;

3. That the previous orders herein should be vacated and held for naught; and

4. That a warrant to convey Elizabeth Beatrice Hobart from Dettmer Hospital, Rural Route No. 1, Troy, Ohio, to the sheriff of Miami county, Ohio. SHOULD ISSUE

Ordered, adjudged and decreed that the orders heretofore made herein relative to the care and custody of Elizabeth Beatrice Hobart be and are hereby vacated and held for naught; that the said Elizabeth Beatrice Hobart be and is hereby committed to the Dayton State Hospital, Dayton, Ohio, and placed in the custody of the superintendent thereof for such care and treatment as the medical staff of that hospital deem appropriate; and that a warrant to convey Elizabeth Beatrice Hobart from Dettmer Hospital, Rural Route No. 1, Troy, Ohio, to the Dayton State Hospital, Dayton, Ohio, issue forthwith from this court to the sheriff of Miami county, Ohio.

To all of which the father, Charles C. Hobart, excepts.

## APPENDIX C.

### Opinion of the Court of Appeals.

(Rendered October 30, 1956.)

Miller, Presiding Judge:

This is a law appeal from a judgment of the Probate Court of Miami county ordering that Elizabeth Beatrice Hobart, whom we will hereafter refer to as the child, be committed to the Dayton State Hospital and placed in the custody of the superintendent thereof for such care and treatment as the medical staff may deem appropriate.

The record discloses that on January 1, 1952, an affidavit was duly filed by Rachel Elizabeth Hobart, mother of the

child, alleging that she was mentally ill. All statutory requirements were duly complied with and on May 2, 1952, a hearing was had and the court found that said child was mentally ill and in need of special care and treatment and ordered her committed to the Miami Valley Hospital. Upon application for review she was later committed to the Harding Sanitarium. Several more reviews were had and then on June 2, 1955, the court again ordered that a review of the custodial order be held. The cause then came on for hearing on said motion on March 10, 1956, at which time the court found that appellant's motion was not well taken and should be overruled; that all former custodial orders be vacated and that said child be committed to the Dayton State Hospital.

The appeal is being prosecuted by said Charles C. Hobart, father of the child, who alleges that he is the natural guardian and next friend of his daughter. The mother, who has been designated as the applicant-appellee, is urging through her counsel that the court properly overruled the appellant's motion. The right of the appellant to prosecute this appeal might be questioned, since he is not a lawfully appointed guardian, but since this question has not been raised, we will express no opinion on the same.

The first three assignments of error relate to the alleged errors in finding that the child was mentally ill on May 2, 1952. Clearly, the time for prosecuting these alleged errors is long past and this court has no jurisdiction to entertain them.

The fourth assignment of error appears to be the principal one relied upon by the appellant, to-wit:

> "4. The court erred in placing Elizabeth Beatrice Hobart in the custody of Dr. George W. Harding, Columbus, Ohio, and others during the four years last past and in failing to order her placed in the custody, care and control of her father, Charles C. Hobart."

It may not be questioned that the court had the authority to make the commitment upon its being satisfied that said child was mentally ill and in need of specialized care, for it is so provided in Section 5123.23 of the Revised Code of Ohio. The power is a discretionary one and may not be [redacted] unless there has been an abuse of the same.

We have reviewed the entire record and conclude that under the evidence the trial judge had the right to find that the child is mentally ill and that its best interest require that it be hospitalized. It is only in the exercise of a fatherly instinct, for which he should be commended, that the father desires the child be kept out of a public institution and turned over to him for custody and control. However, he has presented no plan which appears to be feasible and for the best interests of the child. Therefore, the court did not abuse the discretion accorded to it under the cited section of the Revised Code.

We find no error in the record and the judgment will be affirmed.

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## APPENDIX D.

### Journal Entry of the Court of Appeals.

On consideration of the record and assignments of error on this appeal on questions of law, the court fails to find any error appearing on the record in the proceedings of the court below, prejudicial to the rights of the respondent-appellant, and the judgment of the Probate Court of Miami county is therefore affirmed, at the respondent-appellant's costs, and it is ordered that a mandate issue to the Probate Court of Miami county to that effect.

A rehearing is denied. To all of which appellant excepts.

## APPENDIX E.

### Opinion of the Court of Appeals.

(Rendered on the 18th day of December, 1956.)

By the Court:

We have given further consideration to the application for a rehearing and are of the opinion that the same is not well taken. It will, therefore, be denied.

Miller, P. J., Hornbeck and Wiseman, JJ., concur.

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## APPENDIX F.

### Entry of the Supreme Court of the State of Ohio.

This cause came on to be heard upon the transcript of the record of the Court of Appeals of Miami county, upon the motion of the appellee to dismiss the appeal, filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adjudged that the appellee recover from the appellant its costs herein expended, taxed at $.....

Ordered, that a special mandate be sent the Court of Probate of Miami county, to carry this judgment into execution.

Ordered, that a copy of this entry be certified to the clerk of the Court of Appeals of Miami county, "for entry".

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FILED
SEP 4 1957
JOHN J. FEY, Clerk

No. 355

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

CHARLES C. HOBART,
Father of Elizabeth Beatrice Hobart,
*Appellant*

v.

RACHEL ELIZABETH HOBART,
Mother of Elizabeth Beatrice Hobart,
*Appellee*

**On Appeal from the Supreme Court of Ohio**

## MOTION TO DISMISS APPEAL

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IN THE

# Supreme Court of the United States

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CHARLES C. HOBART,
Father of Elizabeth Beatrice Hobart,
*Appellant*

v.

RACHEL ELIZABETH HOBART,
Mother of Elizabeth Beatrice Hobart,
*Appellee*

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**On Appeal from the Supreme Court of Ohio**

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## MOTION TO DISMISS APPEAL

Rachel Elizabeth Hobart, mother of Elizabeth Beatrice Hobart and appellee herein—the original petitioner in the Probate Court of Miami County, Ohio, and the appellee in the Court of Appeals of Miami County, Ohio, and the Supreme Court of Ohio—moves under Rule 16 of this Court's Revised Rules that the appellant's appeal be dismissed for the reason, as provided in paragraph (b) of said Rule 16, that the federal questions sought to be reviewed were not timely or properly raised or expressly passed on.

## STATEMENT AND ARGUMENT

Appellant appealed to the Supreme Court of Ohio the decision of the Court of Appeals of Miami County, Ohio, as of right; which appeal is permitted under Ohio judicial procedure in cases in which constitutional questions are involved, if such questions are timely raised. Appellant failed, however, until in the Supreme Court of Ohio, to challenge the constitutionality of the Ohio statute, and the procedure therein, by virtue of which the finding of mental illness and the hospitalization order were made in this case. His earlier failure to raise his constitutional questions in the Ohio courts was fatal to his appeal as of right to the Supreme Court of Ohio, under the authority of the following cases:

*Zimmerman* v. *Morris Plan Bank*, 1925, 113 Ohio State 703
*Cuthbertson* v. *State*, 1922, 106 Ohio State 658
*Hoffman* v. *Staley*, 1915, 92 Ohio State 505.

The record discloses that the appellant did not raise his constitutional or federal questions in either the trial court, i.e., in the Probate Court of Miami County, Ohio, or in the Court of Appeals for Miami County, Ohio; that, therefore, such questions were not timely raised under Ohio procedure; and that the Supreme Court of Ohio found itself without jurisdiction to decide such questions, and in fact did not decide the constitutional questions the appellant raised. The failure of the appellant to raise his federal questions at the proper time leaves this Court without jurisdiction also, and such failure is fatal to his appeal to the Supreme Court of the United States.

An Ohio case decided by this Court on a similar otion to dismiss is impressive authority for sustaining appellee's motion to dismiss the appeal:

*Martin* v. *City of Struthers*, 1942, 317 U.S. 589; 87 L.Ed. 483.

Appellee respectfully submits that her motion to ismiss appellant's appeal must be sustained.

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